

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In re:

TIMOTHY H. GENS,

Debtor,

Case No. 17-27144

Chapter 13

MOTION FOR RELIEF FROM STAY

NOW COMES Doris Kaelin, solely in her capacity as the duly appointed and acting Chapter 7 Trustee of bankruptcy estate of Laura A. Gens, pending in the U.S. Bankruptcy Court, Northern District of California, Case No. 15-53562 (“Movant” or “Kaelin”), by her attorneys, Steinhilber Swanson LLP, by Attorney Claire Ann Resop, and respectfully requests that the Court terminate the automatic stay against Timothy H. Gens (hereinafter, “Debtor”) to allow Movant to take any and all necessary actions with regard to an appeal commenced by Debtor Timothy Gens, entitled *Timothy Gens v. Doris Kaelin*, Case Number 5:17-cv-03616-BLF (“Appeal”), pending before the United States District Court, Northern District of California, San Jose Division (“District Court”). Specifically, Kaelin seeks relief from the automatic stay to take any and all actions necessary with regard to the Appeal, including, but not limited to filing any and all necessary motions and other pleadings she deems necessary to resolve the Appeal and/or cause the Appeal to be dismissed. There is no mention or reference to the Appeal in the Debtor’s recently filed schedules and statement of financial affairs. Dockets 29-30.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a), and the order of reference in this district entered pursuant to § 157(a). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (G). Venue is proper in this District pursuant to 28 U.S.C.

Drafted by:
Attorney Claire Ann Resop
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§§ 1408 and 1409. The basis for the relief sought herein is 11 U.S.C. § 362 and Fed. R. Bankr. P. 4001 and 9014.

Kaelin is the duly appointed and acting Chapter 7 Trustee (“Trustee”) of the bankruptcy estate of Laura A. Gens, Case Number 15-53562 SLJ (“2015 Laura Gens Case”), pending before the United States Bankruptcy Court, Northern District of California, San Jose division (“SJ BK Court”). The primary asset of the 2015 Laura Gens Case was real property commonly referred to as 4141 Old Trace Road, Palo Alto, California (“Property”). Laura Gens was the sole owner of the Property. The Debtor in this case, Timothy Gens, is the spouse of Laura Gens.

On June 8, 2017, the SJ BK Court authorized the Trustee to sell the Property (“Sale Order”). 2015 Laura Gens Case, Docket 361. The Sale Order includes a finding that the buyer of the Property is a good faith purchaser pursuant to 11 U.S.C. § 363(m). On June 19, 2017, debtor Timothy Gens, filed the Appeal. 2015 Laura Gens Case, Docket 374. Timothy Gens sought, on multiple occasions, to obtain a stay pending appeal. No stay of the Sale Order was ever entered. July 19, 2017 Order District Court, denying Timothy Gens’ Motion to Reconsider Order Denying Stay Pending Appeal, District Court, Docket 9.

On July 20, 2017, Timothy Gens filed the above captioned bankruptcy proceeding. On August 4, 2017, this Court granted the Trustee’s motion to retroactively annul the stay with regard to Timothy Gens’ claims that he held an interest in the Property and personal items he allegedly maintained at the Property. Docket 26. On August 9, 2017, the Trustee closed the sale of the Property. Report of Sale of Real Property: 4141 Old Trace Road, Palo Alto, California, 2015 Laura Gens Case, Docket 450.

Trustee desires to complete her administration of the Laura Gens bankruptcy estate, which includes, among other things, resolving the Appeal. Trustee requests relief from the

automatic stay to resolve the Appeal, which is an unscheduled, prepetition “asset” of the Timothy Gens bankruptcy estate captioned above. There is cause to terminate the stay pursuant to 11 U.S.C. § 362(d)(1). It is also appropriate to terminate the stay because the Debtor does not have equity in the asset of the Appeal and said asset is not necessary to an effective reorganization pursuant to 11 U.S.C. § 362(d)(2).

The Trustee also requests the Court’s relief from stay order provide that the 14 -day stay of order found in Bankruptcy Rule 4001(a)(3) shall be waived.

WHEREFORE, Trustee Doris Kaelin respectfully requests the Court to order:

1. The automatic stay is terminated to allow Movant to take any and all necessary actions including, but not limited to, filing all necessary motions and pleadings with regard to an appeal commenced by Debtor Timothy Gens, entitled *Timothy Gens v. Doris Kaelin*, Case Number 5:17-cv-03616-BLF, pending before the United States District Court, Northern District of California, San Jose Division;
2. That the 14 day stay found in Bankruptcy Rule 4001(a)(3) is waived; and
3. For any other relief the Court deems just and appropriate.

Dated this 25th day of August, 2017.

STEINHILBER SWANSON LLP

By: /s/ Claire Ann Resop
Claire Ann Resop
Attorney for Trustee Doris Kaelin
122 W. Washington Ave., Suite 850
Madison, WI 53703
Tel: (608) 630-8990; Fax: (608) 630-8991

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In re:

TIMOTHY H. GENS,

Debtor.

Case No. 17-27144

Chapter 13

NOTICE OF MOTION FOR RELIEF FROM STAY

PLEASE TAKE NOTICE that Doris Kaelin, solely in her capacity as the duly appointed and acting Chapter 7 Trustee of bankruptcy estate of Laura A. Gens, pending in the U.S. Bankruptcy Court, Northern District of California, Case No. 15-53562 ("Movant"), by her attorneys, Steinhilber Swanson LLP, by Attorney Claire Ann Resop, has filed a Motion for Relief from Stay (the "Motion") to terminate the stay and to take any and all necessary actions with regard to an appeal commenced by Debtor Timothy Gens, entitled *Timothy Gens v. Doris Kaelin*, Case Number 5:17-cv-03616-BLF ("Appeal"), pending before the United States District Court, Northern District of California, San Jose Division ("District Court").

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in the bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the Court to grant the relief sought in the Motion, or if you want the Court to consider your views on the matter, then no later than **14 days from the date of this Notice**, you or your attorney must:

File with the Court a written objection at:

Clerk of the U. S. Bankruptcy Court
Room 126, Federal Courthouse
517 E. Wisconsin Avenue
Milwaukee, WI 53202

Drafted by:
Attorney Claire Ann Resop
Steinhilber Swanson LLP
122 W. Washington Ave., Suite 850
Madison, WI 53703
Tel: 608-630-8990 / Fax: 608-630-8991
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If you mail your objection to the Court for filing, you must mail it early enough so the Court will receive it on or before the hearing date.

You must also serve a copy on:

Office of the U. S. Trustee
517 E. Wisconsin Ave., Rm 430
Milwaukee, WI 53202

Attorney Claire Ann Resop
Steinhilber Swanson LLP
122 W. Washington Ave., Suite 850
Madison, WI 53703

Scott Lieske
Chapter 13 Trustee
P.O. Box 510920
Milwaukee, WI 53203

Any objection should state briefly the grounds for such objection. Unless an objection and written request for hearing is filed with the Court and copies mailed as instructed above, on or before the date indicated above, an order will be entered granting the relief requested.

Dated this 25th day of August, 2017.

STEINHILBER SWANSON LLP

By: /s/ Claire Ann Resop
Claire Ann Resop
Attorney for Trustee Doris Kaelin
122 W. Washington Ave., Suite 850
Madison, WI 53703
Tel: (608) 630-8990; Fax: (608) 630-8991

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re:

TIMOTHY H. GENS,

Debtor.

Case No. 17-27144

Chapter 13

CERTIFICATE OF SERVICE FOR
MOTION FOR RELIEF FROM STAY

STATE OF WISCONSIN)
) SS
DANE COUNTY)

Jean M. Steele, being first duly sworn, on oath deposes and says that she is a paralegal with the law firm of Steinhilber Swanson LLP, and that on August 25, 2017, she mailed a true copy of the *Notice and Motion for Relief from Stay and proposed Order* in the above matter, by regular mail, securely enclosed in an envelope with postage paid thereon, or as otherwise noted on the attached list, addressed to the following:

Timothy H Gens (via ECF)

Eliza M. Reyes (via ECF)

Timothy H Gens
N2403 Cisco Road
Lake Geneva, WI 53147


Office of the U. S. Trustee (via ECF)

Scott Lieske, Chapter 13 Trustee (via ECF)



Jean M. Steele

Subscribed and sworn to before me
This 28th day of August, 2017.



Claire Ann Resop, Notary Public
State of Wisconsin
My commission is permanent.



Drafted by:
Attorney Claire Ann Resop
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